[ORIGINAL CIVIL JURISDICTION]

IN RE ENA MOHAMED TAMBY DECEASED.

OOMAH MEIDA binte HAJEE

vs.

MOONA JANA SHAIK ALLAUDIN and others

[IN FORMA PAUPERIS No. 270 OF 1931.]

Executor—Administration under a void Will —possession of land—concellation of grant of Probate—Statutory Declarations of Title—Limitation—Adverse possession—Ordinance No. 56 (Limitation) S. 16 Schedule I Arts: 110 & 112; Ordinance No. 10 of 1929.

The plaintiff was one of the widows of the deceased, who married her after he had made a Will. The Will was duly proved in 1904 by the first defendant one of the Executors named therein. In the capacity of executor the first defendant sold certain immovable property forming part of the deceased's estate and with the proceeds arising out of the sale purchased other properties. He then held these substituted properties under the trusts of the Will. After proceedings firstly by A.P. one of the beneficiaries under the Will and secondly by the plaintiff the grant of Probate was finally revoked and cancelled in 1929. In 1930 the first defendant swore three Statutory Declarations claiming absolute title to the properties in question by virtue of adverse possession. Thereafter he proceeded to deal with the properties as his own. Letters of Administration were granted in 1930 to a Trust Corporation as agents for the plaintiff. In 1931 administration was granted to the plaintiff personally. The present action was brought for the recovery of possession of the properties of which the first defendant claimed absolute ownership, for a vesting order and for other consequential relief. The claim was resisted on the ground *inter alia* that the first defendant held the said land and premises by adverse possession.

Held, that as there was no person capable of suing the executor for possession until after the revocation of the grant of probate, the period of limitation began to run from the date of cancellation of probate, not from the testator's death.

Held further, that the amending Ordinance No. 10 of 1929 in the absence of express words was not retrospective so as to confer a title by adverse possession for a period which had expired before the Ordinance came into force.

Held further, that the first defendant could not enter into possession *qua* executor and trustee and later assume absolute ownership over the properties.

Action tried before TERRELL, J.

The relevant facts are related in the Judgment.

Williamson for the Plaintiff.

Smith for 2nd, 3rd, 4th, 5th and 6th Defendants.

Johannes for the infant children of the 1st defendant.

Cur. Ad. Vult.

TERRELL, J. Ena Mohamed Tamby died on the 2nd December 1903 possessed of considerable immovable property in Singapore. He had made a will dated the 30th March 1902 whereby he appointed the first defendant and others his executors. Between the date of his will and the date of his death he married the present plaintiff but it does not appear to have occurred to anyone that such marriage revoked the will. On 27th June 1904 probate of the will was granted to the first defendant. The other executors never proved. Ordinarily speaking an executor derives his title from the will which speaks from the testator's death. On probate being granted the executor is legally in possession of the assets as from the testator's death under the additional authority of an Order of Court. In 1917 the executor sold certain of the immovable property of the deceased and with the proceeds purchased other immovable property which was conveyed to him as trustee under the will. The only property originally belonging to the deceased and remaining unsold was No. 261 Beach Road. The substituted properties purchased in 1917 are Nos. 46, 47, 48, 49, 50 and 51 Buffalo Road and No. 5 Malay Street. All these properties have been conveyed to one or other of the 2nd, 3rd, 4th, 5th and 6th defendants under circumstances to be mentioned later. The first defendant is now dead but his infant children represent his interests under an Order of Court and appeared by counsel. There were also other properties in Sago Street and Sago Lane which I understand have been acquired by the Singapore Improvement Trust. They are not the subject of the present action.

In or about 1925 it came to the notice of one Abdul Pathak, a beneficiary under the will, that the will might have been revoked by subsequent marriage and on the 25th November 1925 he applied by motion (Originating Motion No. 10 of 1925) for revocation of the probate granted to the first defendant. By the order of Deane J. made on the 30th December 1925 the probate was revoked. The first defendant appealed and on the 21st June 1926 the order of Deane J. was

set aside on the ground apparently that before revocation an issue should have been tried and evidence led. An issue was accordingly directed in which Abdul Pathak was to be plaintiff and the first defendant, defendant.

In the meantime on the 31st December 1925 the present plaintiff applied for Letters of Administration (Probate No. 424 of 1925) and obtained a grant on the 8th January 1926. Having obtained the grant she instructed Messrs. Cheong Koon Seng & Co. on the 4th March 1926 to collect the rents of the properties then comprising the estate of Ena Mohamed Tamby deceased and rents were duly collected on her behalf until August 1926. On the 2nd August 1926 the Letters of Administration granted to the plaintiff were recalled and cancelled as a result of the judgment of the Court of Appeal in Originating Motion No. 10 of 1925.

The proceedings in Probate No. 424 of 1925 and Originating Motion No. 10 of 1925 were consolidated and eventually came on for hearing on the 9th January 1930 and on the 28th January 1930 the Chief Justice gave judgment declaring *inter alia* that the will was revoked by the subsequent marriage of the testator. It was further ordered that the probate should be revoked and Letters of Administration were granted to the British Malayan Trustee & Executor Co. Ltd. on behalf of the plaintiff. Subsequently this grant of Letters of Administration was revoked and on the 5th June 1931 Letters of Administration were granted to the plaintiff personally.

Other actions had been brought against the first defendant for accounts and administration, Suit 244/1925 by Abdul Pathak and Suit 137/1925 by the present plaintiff. All these proceedings were defended by the first defendant as executor and trustee of the will of Ena Mohamed Tamby deceased. In the consolidated suits he even set up a republication of the will by a codicil alleged to have been executed after the deceased's marriage to the plaintiff. The learned Chief Justice however, held that the document propounded was not a testamentary document and did not revive the will.

On the 10th October 1930, however, the first defendant changed his position. He made three statutory declarations in which he set out the material facts as to the will and its revocation and claimed an absolute interest in all the remaining properties of Ena Mohamed Tamby by virtue of long possession. His solicitors had previously to this written to the plaintiff's solicitors on the 14th April 1930 stating that the first defendant had no assets in his hands belonging to the estate and that he claimed the whole of the assets by virtue of long possession.

Immediately after the statutory declaration the first defendant purported to sell No. 5 Malay Street to the second defendant for $5,000, to settle Nos. 46 to 51 Buffalo Road on the 3rd and 4th defendants and to sell No. 261 Beach Road to the 5th and 6th defendants for $10,000 and conveyances were duly executed and registered. It is admitted that the 2nd to 6th defendants are in no better position than the first defendant or his representatives would be if the conveyances had not been executed. In each case the first defendant purported to convey as absolute owner and not as trustee, which was consistent with the attitude he had taken up since April 14th, 1930.

The plaintiff as administratrix issued her writ on the 31st March 1931. By her statement of claim she claims *inter alia* possession of the properties specified above, a vesting order and a rectification of the Register of Deeds with respect to the conveyances to the 2nd to 6th defendants.

In the course of the action the first defendant died and on the 27th May 1932 his representatives filed a defence in which they alleged that the properties other than No. 261 Beach Road had been conveyed to the first defendant as trustee of the supposed will and that he had held them on such trusts up to his death. As to No. 261 Beach Road it was alleged that the first defendant had taken possession of this house as trustee and had been in possession adverse to the deceased's next of kin up to the date of his death. It was admitted at the bar that these allegations were not correct, the properties having in fact been dealt with by the conveyances above referred to.

The 2nd to 6th defendants filed a defence on the 1st September 1931. In para 8 it is alleged that the first defendant was at the date of the conveyances by him entitled to the properties "by

virtue of long and adverse possession for a period of over 12 years and that he was able to and did confer on the 2nd to 6th defendants a good title to the said properties."

These defendants also pleaded possession by themselves or their tenants at the commencement of the action. Both defences set up limitation.

There can be no doubt that apart from limitation the plaintiff as administratrix has a prima facie claim to the assets of the estate. The only defence is adverse possession. As the plaintiff does not allege she has been dispossessed, which would make Article 110 of Ordinance 56 (Limitation) applicable, the defence falls under Article 112 and the defendants must show that they have been in adverse possession for more than 12 years the statute beginning to run from the time that the defendants' possession became adverse. The defendants were certainly not in uninterrupted adverse possession for 12 years immediately before suit because the first defendant's possession was interrupted between March and August 1926. To this the defendants reply that their adverse title was already complete in 1916 and that the plaintiff's title having been lost by 1916 cannot be revived by the temporary possession in 1926. This presumes three propositions of law:—

(1) that time ran from the deceased's death notwithstanding the fact that until the probate was revoked the next of kin were not in a position to establish any claim, and

(2) that 12 years' uninterrupted possession not only barred the plaintiff's remedy but also gave the first defendant a good title by prescription, and

(3) that the first defendant's title was adverse to the plaintiff from the commencement.

As regards the first proposition, the general principle of the Ordinance is that limitation does not run against a person who is unable to act, see Rustomji 4th Ed. p. 780 and *D. Narain Roy* v. *Joges Chander De*, 1924 A.I.R. p. 600 at p. 609 where it is stated "The substance of the matter is that time runs when the cause of action accrues, and a cause of action accrues when there is in existence a person who can sue and another who can be sued." On this principle adverse possession against the tenant does not operate against the landlord during the continuance of the tenancy, and adverse possession against a mortgagor does not operate against a simple mortgagee who is not entitled to immediate possession.

The rule is generally speaking the same in England (Halsbury Vol. XIX, p. 53). So also it has been held under Section 8 of the Hong Kong Limitation Ordinance No. 13 of 1864 that the cause of action arose from the date of grant of letters of administration in 1897 and not from the grant of probate in 1886 of a forged will which on revocation was void *ab initio*, nor from the death of the deceased, *Chan Kin San* v. *Ho Fung Hang*, 1902 A.C., p. 257. The judgment of the Privy Council was delivered by Lord Davey who states on page 261: "It was argued that by these Ordinances all the rights of action included in the estate of the deceased were vested in the registrar or official administrator, and he therefore had, by implication, a statutory right to enforce them by action. But their Lordships think that there is nothing in the sections to which they have been referred to overrule the established rule of law that no action can be maintained in respect of the estate of a deceased person except by a duly constituted administrator or executor."

Mr. Smith, however, argued that although this principle was well established in cases where under the Ordinance time runs from the accrual of a cause of action, the principle does not apply in the case of immovable property where time always runs from the testator's death. For this proposition he relied on the English practice and cited *In re Williams*, 34 Ch. D. p. 558, but on examination it will be found that this case was decided on the express words of Section 6 of the Prescription Act, 3 & 4 Will. IV, C. 27, which enacts that "for the purpose of this Act an administrator claiming the estate of the deceased, possession of whose chattels he shall be appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of letters of administration". This case therefore is, if anything, against Mr. Smith's contention as it shows that it required an express provision to make the cause of action arise at the death. The presumption follows that without such a provision

the ordinary rule, that time only runs from the grant of letters of administration, would not have been excluded.

Mr. Smith further argued that Section 16 of the Ordinance (Section 17 of the Indian Act) showed that under the Ordinance the ordinary rule did not apply in the case of immovable property. Section 16 reads as follows:

> "16.—(1) When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.
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> (2) When a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.
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> (3) Nothing in sub-section (1) applies to suits for the possession of immovable property."

According to Mitra 10th Ed. p. 147, the section (subsections (1) & (2)) adopts the general rule that a complete cause of action cannot accrue unless there be a person in existence capable of suing another person in existence capable of being sued. On page 149 his note to subsection (3) reads "The third subsection provides that the rule of this section shall not apply to enforce right of pre-emption or to suits for the possession of immovable property or an hereditary office, because the application of the rule to such cases would tend to create insecurity of title".

I take this to mean that in respect of immovable property a person entitled to administration will find time running against him from the death and that he cannot escape the running of time by delay in taking out letters of administration. This construction appears to have been adopted in the Colony in the unreported case of *Ho Yang Peng* v. *Talib bin Haji,* Singapore Suit No. 75 of 1929 (see written judgment of Stevens J.). In that case the person in possession succeeded against the administrator who had failed to apply for letters of administration for 31 years. It should, however, be remarked that if the section is intended to enact that in the case of immovable property the executor or next of kin of a deceased shall be in a worse position than they would be in the case of any other property belonging to the deceased, the section is not very happily worded. Subsection (3) excludes the operation of the section in the case of immovable property, and if, as would appear to be the case, the general intention of the Ordinance is not to prejudice the rights of parties who are not in a position to sue it is difficult to extract from Section 16 any direct provision to the contrary. No authority was cited in support of the proposition except the passage from Mitra and the unreported judgment of Stevens J.

However that may be, I do not think that under the Ordinance time can run in the case of immovable property unless there is someone who is in a position to apply for probate or letters of administration. This circumstance entirely differentiates the present case. At the death of Ena Mohamed Tamby there was a will in existence of which probate was duly granted, and such probate was not finally revoked until January 28th, 1930. There never was any time after the deceased's death and until revocation of the probate during which anyone could have sued as one of the next of kin as on an intestacy. The probate itself would have been a complete answer to any such claim. The first and only step which the next of kin could take was revocation of the probate. The position is therefore distinguishable from a case where part of the trusts of a will has failed when the statute will run against the next of kin from the time that their share became payable, because as from that date they were in a position to sue the executors (*Khaw Sim Tek* v. *Chuah Hooi Gnoh Neoh,* 1922, 1 A.C. p. 120). I conclude therefore that though limitation might apply where there was in existence someone in a position to enforce his rights by suit, it has never been held so to apply where there is an executor in possession under the authority of the Court and whose title can only be attacked by probate

proceedings and not by an ordinary civil suit. I should mention that there is no limit of time within which a person may apply to revoke a probate. This point has already been decided as between the plaintiff and the first defendant in the consolidated suits (see judgment of Murison C.J. in Exhibit 4, pp. 4-15).

The next question is whether in this Colony 12 years adverse possession not merely bars the remedy but gives the possessor a good title—in other words whether the Ordinance though apparently a limitation of suits Ordinance, is in fact a prescription Ordinance so far as concerns immovable property. There can be no doubt that for many years past it was always considered that the Ordinance merely barred the remedy and possessory titles were always suspect as the title of the possessive owner might be defeated by the true owner somehow or other recovering possession when he would be remitted to his former title. As recently as 1928 it was held that a possessive owner could never obtain from the Court a declaration of title however long his adverse possession might have been (see judgment of Sproule J. in *Ajar* v. *Ahamad bin Jusoh and anor.*, 1928, S.S.L.R. p. 30.). Our Ordinance never adopted the principle of the Prescription Act or of Section 28 of the Indian Limitation Act until Ordinance No. 56 was amended by Ordinance No. 10 of 1929 which definitely gave the adverse possessor a title when the true owner's remedy was barred. I hold, however, that the amending Ordinance in the absence of express words was not retrospective so as to confer a title in respect of adverse possession for a period which had already expired before the Ordinance came into force.

Mr. Johannes, however, with great ingenuity argued that notwithstanding the absence of any such provision, the adverse possessor nevertheless has been held under similar enactments in British India to obtain an indefeasible title by virtue of his long possession. Mr. Johannes relied on various decisions, the most important of which is the case of *Gunga Gobind Mundul* v. *the Collector of the Twentyfour Pergunnahs and others*, IX Moore Indian Appeals p. 345 and 20 English Reports p. 131. That was a Privy Council decision on the construction of Bengal Regulations for the limitation of suits, No. III of 1793 Section 14, No. VII of 1795 Section 8 and No. II of 1803 Section 18. None of these regulations were available and it would accordingly be highly dangerous to rely on this decision as being an authority for the construction of Ordinance 56 (Limitation), the provisions of which are almost certainly entirely different. It is true that the judgment of Lord Romilly contains certain *dicta* which *prima facie* support Mr. Johannes's argument. For instance, at page 137 it is stated: "If he suffers his right to be barred by the Law of Limitation, the practical effect is the extinction of his title in favour of the party in possession" and there are other passages to a similar effect. On the other hand on page 138 the following passage will be found: "as between private owners contesting *inter se* the title to the lands, the law has established a limitation of 12 years; after that time it declares not simply that the remedy is barred, but that the title is extinct in favour of the possessor." This passage would lead one to suppose that the Bengal Regulations contained some provision similar to that comprised in the amending Ordinance No. 10 of 1929.

The next case was that of *Brindabun Chunder Roy* v. *Tara Chand Banerjee*, 20 Sutherland Weekly Reporter, p. 114. That was a case under the Bengal Limitation Act of 1859 a copy of which was produced before the Court and which like the local Ordinance merely bars the dispossessed owner's remedy and does not in terms give the adverse possessor an indefeasible title. The Court appears to have concluded that the result of the Privy Council decision is "not only that the title of the party whose title is barred by the statute of Limitation is extinguished but that it is extinguished in favour of the possessor."

The last case on the subject is in 21 Allahabad, p. 204. This was a case under the particular provisions of the N. W. Provinces Rent Act of 1881, but the decisions cited above and various other decisions are reviewed. It appears to have been decided in Madras that the Indian Law of Limitation bars the remedy only but does not extinguish the right, but it is pointed out that the Madras cases were decided before the Privy Council decision on which the Bengal cases were

chiefly based. In any case the conclusion of the Allahabad Court is as follows: "The cases however so far assist us that they establish first that a provision as to limitation which in terms merely bars the remedy *may* have the further effect of extinguishing the right and secondly that as regards the possession and dispossession of immovable property or an interest therein, the latter effect *generally follows*."

The Indian decisions therefore do not present a consistent and unmistakable interpretation of Enactments *in pari materia* with our local Ordinance, and I see no reason why the Court should follow them in preference to the local practice and the definite decision of a Court of equal jurisdiction in this Colony.

If I am right in this conclusion it follows that the first defendant's possession from 1904 to 1916 did not give him a title even if such possession was adverse. Still less could he have acquired any such title subsequently as within 12 years of suit his possession was with his assent interrupted by the plaintiff collecting the rents and taking *de facto* possession in 1926.

But what after all do the Indian decisions amount to? What they decide is that when the true owner has been dispossessed by adverse possession, the true owner, if he recovers possession, is not remitted to his former title, that is to say, if he re-enters by force he would be treated as a trespasser as against the person who had been in uninterrupted adverse possession for the prescribed period.

It is difficult to see how such a principle, even if established, is applicable to the facts of the present case. The plaintiff never was in possession as true owner until she came in as a result of the Order of Deane J. in 1926. Never having been in possession she cannot have been dispossessed by the first defendant's possession from 1904 onwards. It must be alleged therefore that it was the deceased that was dispossessed in 1904 and that by inference the plaintiff was so dispossessed because she subsequently obtained representation to the deceased's estate. This line of argument asks the Court to make several assumptions:—The first is that the plaintiff represented the estate in 1904 although she did not in fact do so and could not do so until the probate was revoked. Another assumption is that the first defendant's possession was *ab initio* adverse to the estate of the deceased or to the deceased himself.

This brings me to the last question, that is to say whether or not the first defendant's possession can in truth be considered as adverse.

Mr. Smith cited many authorities to show that the possession of a trustee under a void deed is adverse to the grantor (see *Churcher* v. *Martin*, 42 Ch.D. p. 312, I.L.R. 23 Madras p. 271, I.L.R. 4 Bombay p. 89. So also an executor entering into possession under a will invalid for want of title in the testator would acquire adverse possession against the true owner, but no case was cited in which an executor entering under a void will acquired adverse possession against his own testator. Even in the case of a trustee entering under a void deed such trustee is stopped from pleading that he has acquired a personal right. He is compelled by equity to hold the property on the terms of the deed under which he took possession. Mr. Smith was unable to resist the concurrence of authority on this point and admitted at the bar the defendants could have no defence to an action by the beneficiaries under the will. The admission however involved a serious departure from the defence as pleaded. The defendants allege in para. 8 that the first defendant had acquired the properties by virtue of long and adverse possession and "was able to and did confer (on the 2nd, 3rd, 4th, 5th and 6th defendants) a good title to the properties." Mr. Williamson for the plaintiff quite rightly pointed out that Mr. Smith's allegation at the bar was not the case he had been called on to meet and I think that in the absence of any amendment and in view of the actual conveyances executed by the first defendant, the defendants are confined to the case set up in their pleadings. They must satisfy the Court therefore that although the first defendant entered as executor and trustee, nevertheless his possession was adverse to his own testator and also adverse to his own cestuis que trustent. In my opinion neither of these contentions is tenable. A person who enters in one character cannot at will change that character. If the first defendant entered in a fiduciary capacity he cannot change the character of his possession to that of absolute owner. But

apart from that it appears to be impossible that an executor who has entered under a legal title conferred by the issue of the probate from the Court can ever be said to be in possession adverse to the estate of the deceased. He is not entering under a void deed. He is entering as a result of a solemn judicial act which holds good even after the will has been found to be void until the probate itself is revoked.

For the above reasons I think that the defences fail and that the plaintiff is entitled to judgment.

Judgment for the Plaintiff.

Solicitor for the Plaintiff—*Richard Williamson.*

Solicitors for 2nd, 3rd, 4th and 5th defendants—*Donaldson & Burkinshaw,*

Solicitors for the infants—*Johannes & Sammy.*

[APPELLATE BANKRUPTCY JURISDICTION]

RE TAN KENG TIN & RE CHOP SOON BEE.

[SINGAPORE BANKRUPTCIES Nos. 285 of 1929 and 347 of 1930 CONSOLIDATED]

[SINGAPORE CIVIL APPEAL No. 9 of 1932]

Ordinance No. 155 (Companies) Section 111 (3)—Banking Company's lien over its own shares —Construction of Statutes—Marginal Note to S.S. Ordinances.

Section 111 (3) of Ordinance No. 155 (Companies) provides that no Banking Company shall lend any part of its funds on the security of its own shares. A shareholder of the Batu Pahat Bank Limited holding fully paid up shares had an overdraft with the Bank. After the enactment of section 111 (3) the Bank amended its Articles of Association so as to give themselves a lien over their fully paid shares. The customer having become bankrupt the Official Assignee claimed the shares.

Held. By Murison, C.J., and Burton, J., Whitley, J. dissenting, that the Bank had no lien over the shares.

Per Terrell, J. The Marginal notes to the Ordinances of the Straits Settlements are part of the Ordinances and may be referred to for assistance in interpretation.

The facts were as follows:—

The Batu Pahat Bank Limited was a banking company registered in Singapore in 1921. By Article 29 of its Articles of Association the Bank were given a lien upon all the shares (not fully paid up) registered in the name of each member. Tan Keng Tin was a shareholder holding fully paid up shares. He was also a customer having a current account which was overdrawn continuously onwards from 1921. Interest on the overdraft and dividends on the shares were respectively debited and credited to the overdrawn account. The share certificates were never deposited with the Bank.

In 1923 the following provision of the Companies Ordinance was enacted:—

> 111(3) No (Banking or Insurance) Company shall lend any part of its funds on the security of its own shares.

In 1927 the Bank by Special Resolution amended Article 29 by deleting the words "(not fully paid up)" thereby extending the lien to fully paid up shares.

In 1927 Tan Keng Tin became bankrupt. The Official Assignee claimed the shares free of lien and the Bank claimed the lien.

Demuth for the Bank.

Taylor, Assistant Official Assignee.

Cur. Ad. Vult.

TERRELL, J.—The facts in this case are not in dispute. The bankrupt was the sole proprietor of a firm called Goh Chok & Company. He was at all material times and still is the registered holder of 100 fully paid shares of $100 each in the Batu Pahat Bank Limited, a Company registered in Singapore. In or about the year 1921 Tan Keng Tin obtained from the Bank an overdraft for $10,000 in respect of which he appears to have given the Bank a promissory note but no other security. Under the original Articles of Association, Article 29 only gives the Bank a lien on partly paid shares. No lien therefore attached to Tan Keng Tin's shares in respect of his overdraft. In 1927, however, the Company amended Article 29 by Special resolution with the result that the Bank's lien *prima facie* attached to fully paid shares such as those registered in the name of Tan Keng Tin. In 1928 the Bank obtained a promissory note from Tan Keng Tin in respect of his overdraft which then stood at $9,000. The Bank at no time had possession of the scrip for the shares registered in Tan Keng Tin's name, but now that Tan Keng Tin has been adjudicated bankrupt they claim a paramount lien on the shares in respect of the overdraft. This lien is disputed by the Official Assignee.

The Official Assignee's argument shortly is that in 1923 the law relating to companies was amended and Section 111(3) of the Companies Ordinance 1923 prohibits banking companies from lending any part of their funds on the security of their shares. It is argued therefore that since 1923 a banking company has lost the power possessed by other companies to declare under its articles a lien on a shareholder's share in respect of any debts due by such shareholder to the Company. Or in other words that owing to the provisions of Section 111 Article 29 is *ultra vires.*